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WOOD, HERRON & EVANS, LLP
2700 CAREW TOWER
441 VINE STREET
CINCINNATI, OH 45202

EXAMINER	
JANCA, ANDREW JOSEPH	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

ADVISORY ACTION (ATTACHMENT)

Status of Amendments After Final

1. The amendment after final rejection filed on 4/27/11 has not been entered. The substantive amendment to claim 1 that the sensor be able to sense and the processor use in its calculation the rotational speed of the drum, rather than a generic rotational motion, raises new issues which would require further consideration and possibly further search. Further, clear support for the amendments to claims 2 and 3 cannot be found in the original disclosure, and hence these amendments raise new matter issues.

2. Although full consideration of the issues raised by the proposed amendment would require a substantial amount of time and consultation, a preliminary reading suggests that the submitted expert affidavit in support of the novelty of the amended claims is based upon a flawed reading of the references cited by the prior action, and thus this claim language and supporting arguments alone may not be the best approach for advancing Applicant's case in subsequent prosecution. It appears that the proposed amendment to claim 1 would not exclude the calculating system of Humpish from its scope.

3. Dr Koehler (Affidavit 4/27/11 point 11 forward) restricts the evidence of how the processing means of Humpish calculates slump to claims 1 and 2 alone. A reading of the entirety of Humpish's specification shows that among the parameters measured by the work measuring means and used by the processor to calculate slump is the

rotational speed of the drum, and not merely the work as commonly defined in engineering practice.

4. Humpish (GB 2392502 A) makes it clear that the work measuring means of 2:17 is arranged to generate work data (2:20) which is processed by the processing means (2:22-24) to calculate the slump (2:30-3:3). Among these work data measured by the work measuring means is the speed of rotation of the drum (6:21-7:3; 14:23-31). Humpish further stresses the importance of including the speed of the drum as a necessary input to calculating slump (19:4-7) and the processing means' use of the known speed of the drum (19:13-18) and control of the speed of the drum to ensure that the drum is indeed turning at the desired speed (10:5-11, 14:26-28, 17:17-20) for an accurate determination of slump. Both the hydraulic back pressure and speed are used by the processor to quantify slump: the distinction of Humpish's control system is that although both back pressure and speed are used as variables, it also can vary speed directly as an independent variable by setting the drum to rotate at a known desired speed (19:3-18) to determine whether the batch is within an acceptable range of parameters, or should be rejected (19:18-27).

5. Humpish et al (GB 2392027 A, the secondary reference of the 103 rejections) further make clear that although the "measure of the work required to rotate the drum" in the passages cited by Dr Koehler (2:14-23, 2:30-3:2) is used to "produce first data" (2:17-18) with the further step of "determining the slump value of the concrete load from the first data" (2:19-20), the definition or calculation of "work" differs from the common definition, for "in each case means may be provided to sense the speed of the drum and

to use the sensed speed to produce the first data" (3:7-8). Alternatively, in the case where the "first data" may be only "a simple signal containing the hydraulic pressure measurements" (6:4-5), the rotational speed of the drum may also be transmitted along with the first data as part of the information (6:7-11) used to calculate slump by the receiving computer (6:11-15). This is necessary because according to the method of Humpish et al, the slump cannot be calculated without knowing the rotational speed of the drum (5:29-6:4), which must be constant (and hence constant over some period of time) in order for the calculation to be accurate (5:30). In both cases, Humpish et al make clear that "to obtain a measure of the work required to rotate the drum, means are provided to sense the speed of rotation of the drum and the pressure exerted on the hydraulic system rotating the drum by the concrete mix. The speed and pressure may thus be correlated with known slump values for that particular mix." (2:27-3:1). It is only by a very selective reading of the two disclosures, ignoring the descriptions of how the rotational speed of the drum is sensed and controlled and how it is used as a parameter in the calculation of slump, that this essential element of the two related methods of Humpish and Humpish et al may be overlooked.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Janca whose telephone number is (571) 270-5550. The examiner can normally be reached on M-Th 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Griffin can be reached on (571) 272-1447. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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AJJ

/DAVID L. SORKIN/
Primary Examiner, Art Unit 1774